

House Daily Reader

Friday, February 11, 2000

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State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

285D0028

HOUSE TAXATION COMMITTEE ENGROSSED NO. **HB1005** - 2/4/00

Introduced by: Representatives Lintz, Chicoine, Engbrecht, Juhnke, McNenny, Sutton (Duane), Waltman, and Young and Senators Symens, Madden, Paisley, and Vitter at the request of the Interim Tax Assessment Committee

1 FOR AN ACT ENTITLED, An Act to use agricultural income value to determine the value of
2 agricultural land and to conduct a pilot study on agricultural income value.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 Notwithstanding the provisions of § 10-6-33, agricultural land shall be assessed based on its
7 agricultural income value. The agricultural income value of agricultural land shall be determined
8 on the basis of productivity and the annual earnings capacity of the agricultural land if the land
9 is used for agricultural purposes. The productivity of land and its annual earning capacity shall
10 be based on data collected and analyzed pursuant to sections 2 to 5, inclusive, of this Act.

11 Section 2. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as
12 follows:

13 Agricultural income value is defined as the capitalized average annual earning capacity. The
14 annual earning capacity shall be determined from share rent and, reduced by the estimated
15 property taxes and marketing expenses incurred by agricultural land owners renting agricultural

land on a share basis. The capacity of the cropland to produce agricultural products shall be based on average yields for crops or plants under natural conditions. The capacity of noncropland to produce agricultural products shall be based on average acres per animal unit under natural conditions. For the purpose of this section, annual earning capacity for:

- (1) Cropland is thirty percent of the annual gross income produced;
- (2) Noncropland is twenty-five percent of the annual gross income capacity of the land based upon the animal carrying capacity of the land.

The economics department of South Dakota State University shall annually compute the average annual earning capacity of cropland and noncropland for each county using the data base defined in section 4 of this Act. The average annual earning capacity shall be capitalized at a rate of six percent to determine the capitalized average annual earning capacity. The economics department shall annually provide the secretary of revenue this information by June first.

Section 3. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as follows:

Before July first, the secretary of revenue shall annually provide each director of equalization the agricultural income value for each county as computed pursuant to section 2 of this Act. Before November first the director of equalization shall annually determine the assessed value of agricultural land. Agricultural land shall be assessed based on its agricultural income value and adjusted by the following factors:

- (1) The capacity of the land to produce agricultural products as specified in section 2 of this Act; and
- (2) The location, size, soil survey statistics, terrain, and topographical condition of the land including the climate, accessibility, and surface obstructions which can be documented.

Section 4. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 The secretary of revenue shall enter into contracts with South Dakota State University and,
3 if necessary, the South Dakota Agricultural Statistics Service for the purpose of creating a data
4 base to determine the agricultural income value of agricultural land by county. A data base for
5 an identifiable region within a county may be created if the director of equalization shows a need
6 for establishing identifiable regions within a county. The secretary shall collect such data for
7 1993, which will serve as the first year of the data base, and each year thereafter. The data base
8 shall consist of the most recent eight years of data that have been collected and the years
9 representing the highest and lowest agricultural income value shall be discarded from the data
10 base. The data base for the 2002 assessment year shall consist of data from 1993 to 2000,
11 inclusive, and the data base for each assessment year thereafter shall be adjusted accordingly.

12 Section 5. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 Agricultural land shall be divided by the director of equalization into categories, including
15 cropland and noncropland, so that the categories reflect uses appropriate for the valuation of
16 such land. Each category shall be divided into subclasses based on soil classification standards
17 developed by the United States Department of Agriculture Natural Resources Conservation
18 Service.

19 Section 6. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as
20 follows:

21 Buildings and structures, other than normally occupied dwellings on agricultural land and
22 automobile garages or portions of buildings used for that purpose, which are used exclusively
23 for agricultural purposes and situated on agricultural land are hereby specifically classified for
24 tax purposes as agricultural property and shall be assessed pursuant to § 10-6-33.

25 Section 7. That chapter 10-6 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 The agricultural income value for agricultural land as determined pursuant to section 1 of this
3 Act represents eighty-five percent of the fair market value.

4 Section 8. That § 10-6-1 be amended to read as follows:

5 10-6-1. Terms used in this chapter mean:

- 6 (1) "Credit," every claim and demand for money or other valuable thing and every annuity
7 or sum of money receivable at stated periods, due or to become due, and all claims
8 and demands secured by deeds or mortgages due or to become due, except for
9 contracts for deed and mortgages, in which case the term means only the payment
10 received each year under the contract or mortgage;
- 11 (2) "District," township, municipality, or ward, as the case may be;
- 12 (3) "Full agricultural land value," the value of agricultural land as determined by the
13 application of this chapter;
- 14 (4) "Money," gold and silver coin, treasury notes, bank notes, and every deposit which
15 any person owning the same or holding in trust and residing in this state is entitled to
16 withdraw in money on demand;
- 17 (5) "Tract," "lot," "piece," or "parcel" of real property, or "piece or parcel of land," any
18 contiguous quantity of land in the possession of, owned by, or recorded as, the
19 property of the same claimant, person, or company;
- 20 (6) "True and full value," for all real property, except agricultural land, the usual cash
21 selling price at the place where the property to which the term is applied shall be at
22 the time of the assessment.

23 Section 9. That § 10-6-33.1 be repealed.

24 ~~10-6-33.1. The true and full value in money of agricultural land, as defined by § 10-6-31,~~
25 ~~which has been in primarily agricultural use for at least five successive years immediately~~

preceding the tax year for which assessment is to be made shall be the market value as determined for each county through the use of all comparable sales of agricultural land based on consideration of the following factors:

~~(1) The capacity of the land to produce agricultural products as defined in § 10-6-33.2; and~~

~~(2) The soil, terrain, and topographical condition of the property including but not limited to capability, the land's use, climate, accessibility, and surface obstructions which can be documented through an analysis of land selling prices.~~

~~The comparable sales that are used shall be evidenced by an instrument recorded with the register of deeds of the county in which the land is located, if the date of such instrument and the recording date is not more than two years prior to the assessment year.~~

Section 10. That § 10-6-33.2 be repealed.

~~10-6-33.2. Capacity of land in agricultural use to produce agricultural products shall be based on average yields under natural conditions, in the case of land producing crops or plants, and on the average "acres per animal unit," in the case of grazing land; said average shall affect each operating unit and shall be based on the ten-year period immediately preceding the tax year in issue. In determining such capacity to produce, the county director of equalization and/or the county board of equalization must take into consideration yields, and/or carrying capacity, as determined by the soil conservation service, the agricultural stabilization and conservation service, the extension service, federal land bank, and private lending agencies dealing with land production capacities.~~

Section 11. That § 10-6-33.3 be repealed.

~~10-6-33.3. Land or improvement on land within an operating unit which is not used incident to an agricultural pursuit shall be separately listed and assessed and the income therefrom shall not be used in determining the values for the purposes of §§ 10-6-33.1 and 10-6-33.2.~~

Section 12. That § 10-6-33.4 be repealed.

~~10-6-33.4. If agricultural land has been classified pursuant to chapter 10-10, land within these classifications and the classifications shall conform to the provisions of §§ 10-6-33.1 to 10-6-33.3, inclusive.~~

Section 13. That § 10-6-33.5 be amended to read as follows:

10-6-33.5. The assessment, valuation, equalization, and taxation of school and endowment lands shall be at the same level and on the same basis as lands assessed, valued, and equalized according to ~~§§ 10-6-33.1 to 10-6-33.4, inclusive~~ sections 1 to 5, inclusive, of this Act.

Section 14. That § 10-6-33.6 be repealed.

~~10-6-33.6. If the median value per acre in an identifiable region within a county deviates by more than ten percent from the county average, the county director of equalization may establish a separate market value per acre for the land defined by the director of equalization within that region.~~

Section 15. That § 10-6-33.7 be repealed.

~~10-6-33.7. Agricultural land in each county shall be divided into the eight classes defined by the United States Department of Agriculture's soil conservation service as published in its soil survey for each county. The county director of equalization shall, based on the agricultural lands soil survey classification, determine a value for each soil type. The value for each soil type shall be determined from sales of similar land based upon its soil survey classification, and as adjusted for the factors contained in subdivision 10-6-33.1(2). The sales used shall be sales of agricultural land that are sold for agricultural purposes.~~

Section 16. That § 10-6-33.12 be repealed.

~~10-6-33.12. For the purposes of §§ 10-6-33.8 and 10-6-33.9, there shall be a separate median sales to assessment ratio and coefficient of dispersion for agricultural and nonagricultural real property.~~

Section 17. That § 10-6-33.20 be repealed.

~~10-6-33.20. Any agricultural land, as defined in § 10-6-31.3, which is sold in an increment of seventy acres or less, may not be used for the purpose of valuing agricultural land. The sale of any agricultural land, which is not used for purpose of valuing agricultural property pursuant to this section, may not be used in any sales ratio study.~~

Section 18. That § 10-11-56.5 be repealed.

~~10-11-56.5. No sale of any land which is classified pursuant to § 10-6-58 may be used in any sales ratio study.~~

Section 19. That § 10-11-57 be repealed.

~~10-11-57. In order to determine the ratio for agricultural land assessed pursuant to § 10-6-33.1, the secretary of revenue shall compare the assessed valuations on properties used for tax purposes in the year sold with the agricultural values of those properties as determined under §§ 10-6-33.1 and 10-6-33.2.~~

Section 20. That § 10-12-31.1 be amended to read as follows:

10-12-31.1. Notwithstanding other provision of law, when applying the levies for school purposes, the county director of equalization of each county shall adjust the level of assessment in that district so that the level of assessment as indicated by the most recent assessment to sales ratio as provided for in § 10-11-55 and the most recent ~~assessment to full agricultural land value ratio~~ agricultural income value as provided for in ~~§ 10-11-57 section 1 of this Act~~ in that district are equal to eighty-five percent of market or agricultural income value. The Department of Revenue shall provide the director of equalization of each county all of the factors of adjustment necessary for the computations required in this section.

Section 21. Sections 1 to 3, inclusive, of this Act and sections 5 to 20, inclusive, of this Act are effective on July 1, 2002.

Section 22. The secretary of revenue shall conduct a pilot study concerning the use of

1 agricultural income value as a means to value agricultural land. The pilot study shall include an
2 analysis of various capitalization rates and determine the impact of such rates on the total
3 statewide assessed value of agricultural property and its relationship to the total statewide
4 assessed value of all property. The pilot study shall include the counties of Clark, Moody,
5 Turner, Brown, Hyde, Lyman, Corson, Meade, and Custer. The secretary shall, for the purpose
6 of providing information, apply the provisions and procedures provided in this Act to value
7 agricultural land in the selected counties. The secretary shall submit a report detailing the
8 information collected to the Executive Board of the Legislative Research Council by March 31,
9 2001. The Executive Board of the Legislative Research Council, after receipt of the pilot study,
10 may implement an interim study to study the effects of the capitalization rate, preventing a tax
11 shift between agricultural and nonagricultural property, and to evaluate the procedures used to
12 determine agricultural income values, preventing tax shifts within agricultural property.

1 **BILL HISTORY**

2 1/11/00 First read in House and referred to Taxation. H.J. 13

3 1/20/00 Scheduled for Committee hearing on this date.

4 2/3/00 Scheduled for Committee hearing on this date.

5 2/3/00 Taxation Do Pass Amended, Passed, AYES 10, NAYS 2. H.J. 402

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

874D0716

HOUSE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **HB1235** - 2/9/00

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.

Introduced by: Representatives Young, Juhnke, McCoy, Monroe, Sebert, and Slaughter and
Senators Whiting, Benson, and Frederick

1 FOR AN ACT ENTITLED, An Act to restrict the use of public property for political purposes.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That chapter 12-25 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 No public employer may allow the use of public property, equipment, facilities, or resources
6 for express advocacy by a ballot question committee, candidate, candidate's committee, political
7 action committee, or political party committee or any committee. A public employer is the state,
8 any local government, government agency, government instrumentality, special district, joint
9 powers authority, school board, or special purpose organization that employs one or more
10 persons.

1 **BILL HISTORY**

2 1/21/00 First read in House and referred to Local Government. H.J. 177

3 2/8/00 Local Government Hog Housed.

4 2/8/00 Scheduled for Committee hearing on this date.

5 2/8/00 Local Government Do Pass Amended, Passed, AYES 7, NAYS 4. H.J. 504

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

883D0106

HOUSE STATE AFFAIRS COMMITTEE ENGROSSED NO. **HB1250** - 2/9/00

Introduced by: Representatives Young, Clark, Derby, Diedtrich (Elmer), Duenwald, Duniphan, Earley, Eccarius, Engbrecht, Fiegen, Fitzgerald, Jaspers, Juhnke, Klaudt, Koskan, McCoy, McNenny, Michels, Napoli, Pummel, Richter, Sebert, Slaughter, and Sutton (Duane) and Senators Whiting, Benson, Bogue, Drake, Madden, Shoener, and Vitter

1 FOR AN ACT ENTITLED, An Act to provide for certain election or campaign finance reforms.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That chapter 12-25 be amended by adding thereto a NEW SECTION to read as
4 follows:

5 A public employer is the state, any local government, government agency, government
6 instrumentality, special district, joint powers authority, school board, or special purpose
7 organization that employs one or more persons.

8 Section 2. That chapter 12-25 be amended by adding thereto a NEW SECTION to read as
9 follows:

10 No public employer may collect, deduct, or transmit any money that will be used for partisan
11 political activity. Money is deemed to be used for partisan political activity if it is expended or
12 commingled with funds used for partisan political activity.

13 Section 3. That chapter 12-25 be amended by adding thereto a NEW SECTION to read as
14 follows:

Political activity is:

- (1) The independent expenditure for communications advocating the election or defeat of a clearly identified partisan candidate for public office;
- (2) The participation in or intervening in any partisan political campaign on behalf of or in opposition to any candidate for partisan public office, any political party, or committee;
- (3) The support or opposition of any pending or proposed ballot measure, including the effort to collect signatures, direct mail and media campaigns, soliciting signatures for initiative or referendum petitions, or to discourage voters from signing petitions; or
- (4) Any contribution to the operation or expenses of a partisan political action committee.

Political activity does not include the activities that are necessary to fulfill statutory obligations to inform the electorate or the public about the candidates or issues to be voted upon in a forthcoming election.

Section 4. That chapter 12-25 be amended by adding thereto a NEW SECTION to read as follows:

If a person or organization has used any money collected, deducted, or transmitted by a public employer for partisan political activity, the public employer is prohibited from collecting, deducting, or transmitting any funds for that person or organization for any purpose for a period of two years.

Section 5. That chapter 12-25 be amended by adding thereto a NEW SECTION to read as follows:

An employee whose wages have been deducted in violation of this Act may sue to obtain injunctive relief against the violator, person, or public employer. An employee whose wages have been deducted in violation of this Act may sue to recover damages equal to:

- (1) The amount actually deducted from the employee's wages; and

1 (2) Twice the amount actually received by the individual or organization from the injured
2 public employee.

3 The remedies provided in this section do not preempt any other causes of action and damage
4 awards which may be available to public employees as a result of any violation of this Act. This
5 section does not abrogate or waive sovereign immunity. The court may award reasonable
6 attorney's fees to an employee as part of a judgment to enforce this Act.

7 Section 6. That chapter 12-25 be amended by adding thereto a NEW SECTION to read as
8 follows:

9 Any written or oral agreement, understanding, or practice between a public employer and any
10 individual or organization that is in violation of this Act is void.

1 **BILL HISTORY**

2 1/21/00 First read in House and referred to State Affairs. H.J. 180

3 2/9/00 Scheduled for Committee hearing on this date.

4 2/9/00 State Affairs Do Pass Amended, Passed, AYES 7, NAYS 6.

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

237D0773

HOUSE STATE AFFAIRS COMMITTEE

ENGROSSED NO. **HB1261** - 2/9/00

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.

Introduced by: Representatives Weber, Diedtrich (Elmer), Duenwald, Monroe, Sebert, and Waltman and Senators Lawler, Dunn (Rebecca), Flowers, Lange, Madden, Reedy, Symens, and Vitter

1 FOR AN ACT ENTITLED, An Act to permit schools to display the Ten Commandments.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. An object or document containing the words of the Ten Commandments may be
4 displayed in any public school classroom, public school building, or at any public school event,
5 along with other objects and documents of cultural, legal, or historical significance that have
6 formed and influenced the legal and governmental systems of the United States and the State of
7 South Dakota. Such display of an object or document containing the words of the Ten
8 Commandments:

9 (1) Shall be in the same manner and appearance generally as other objects and documents
10 displayed; and

11 (2) May not be presented or displayed in any fashion that results in calling attention to it
12 apart from the other displayed objects and documents.

1 **BILL HISTORY**

2 1/24/00 First read in House and referred to committee assignment waived. H.J. 195

3 1/25/00 Referred to State Affairs.

4 2/9/00 Scheduled for Committee hearing on this date.

5 2/9/00 State Affairs Do Pass Amended, Passed, AYES 0, NAYS 0.

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

944D0698

HOUSE AGRICULTURE AND NATURAL RESOURCES

COMMITTEE ENGROSSED NO. **HB1301** - 2/9/00

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.

Introduced by: Representatives Jaspers, Duenwald, Hanson, Juhnke, Napoli, and Wetz and
Senators Symens and Benson

1 FOR AN ACT ENTITLED, An Act to revise certain provisions related to meandered and
2 unmeandered lakes.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 43-17-2 be amended to read as follows:

5 43-17-2. Unless the grant under which the land is held indicates a different intent, the owner
6 of the upland, if it borders upon a ~~navigable~~ meandered lake or navigable stream, takes to the
7 edge of the lake or stream at low water mark. All navigable ~~rivers~~ streams and meandered lakes
8 are public highways within fifty feet landward from the water's nearest edge, ~~provided that,~~
9 However, the outer boundary of such public highway may not expand beyond the ordinary high
10 water mark and may not contract within the ordinary low water mark, ~~and~~ subject to the
11 provisions of §§ 43-17-29, 43-17-31, 43-17-32, and 43-17-33.

12 Section 2. That chapter 43-17 be amended by adding thereto a NEW SECTION to read as
13 follows:

14 There is no public right to or interest in any unmeandered lake or any unnavigable stream.
15 All rights and interests vest with the owner of the land beneath any unmeandered lake or

1 un navigable stream.

2 Section 3. That § 43-17-29 be amended to read as follows:

3 43-17-29. If ~~any~~ the water level rises above the ordinary high water mark of a ~~navigable~~
4 meandered lake, the right of the public to the enjoyment of the entire lake ~~may is not be~~ limited;
5 ~~except that. However, the public may only~~ access to the lake ~~shall be~~ by public right-of-way or
6 by permission of the riparian landowner and is subject to the provisions of §§ 43-17-2, 43-17-31,
7 43-17-32, and 43-17-33.

8 Section 4. That § 43-17-31 be amended to read as follows:

9 43-17-31. The provisions of §§ 43-17-2 and 43-17-29 notwithstanding, any landowner may
10 deny public access to ~~his taxable~~ private real property, including inundated property, if such
11 property has been inundated for a period of at least three years, borders the water's edge, and
12 lies above the ordinary high water mark of a ~~navigable~~ meandered lake that includes at least five
13 thousand acres of inundated land in private ownership. A landowner who chooses to deny access
14 to ~~his~~ inundated lake property pursuant to this section shall request the Department of Game,
15 Fish and Parks to mark the boundaries of the affected property; and the department shall, upon
16 request, clearly mark the restricted area so that the markings are plainly visible and
17 understandable to ~~a user~~ anyone interested in the use of the lake. This section does not apply to
18 public highways that are maintained for use by motor vehicles.

19 Section 5. That § 43-17-32 be amended to read as follows:

20 43-17-32. Any landowner may deny a state agency the use of ~~his taxable~~ private real
21 property, including inundated property, if such property has been inundated for a period of at
22 least three years, borders the water's edge, and lies above the ordinary high water mark of a
23 ~~navigable~~ meandered lake that includes at least five thousand acres of inundated land in private
24 ownership. Any state agency may allow public access for stated purposes to ~~taxable~~ private real
25 property if the landowner has given ~~his~~ permission for such access and use and if all taxes paid

1 by the landowner on the property for the period in which the property is open to public use are
2 reimbursed by the state agency. This section does not apply to public highways that are
3 maintained for use by motor vehicles.

4 Section 6. That chapter 43-17 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 For the purposes of this chapter, a lake is meandered if, during the survey of this state,
7 undertaken by the federal government for purposes of platting out the sections of land available
8 for sale and use, the lake's existence was indicated on the survey maps by a meander line to
9 delineate the sinuosities of the banks of the lake.

1 **BILL HISTORY**

2 1/24/00 First read in House and referred to committee assignment waived. H.J. 203

3 1/25/00 Referred to Agriculture and Natural Resources.

4 2/5/00 Scheduled for Committee hearing on this date.

5 2/8/00 Agriculture and Natural Resources Hog Housed.

6 2/8/00 Scheduled for Committee hearing on this date.

7 2/8/00 Agriculture and Natural Resources Do Pass Amended, Passed, AYES 7, NAYS 5.

8 H.J. 479

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

291D0747

HOUSE APPROPRIATIONS COMMITTEE

ENGROSSED NO. **HB1310** - 2/9/00

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.

Introduced by: Representatives Heineman, Apa, Duenwald, Eccarius, Fryslie, Hunt, Klaudt, Koskan, McCoy, Monroe, Napoli, and Young and Senators Madden and Vitter

1 FOR AN ACT ENTITLED, An Act to provide for a minimum teacher salary schedule.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. Effective July 1, 2001, each school district shall adopt a teacher salary schedule
4 that provides that the base salary for a first year teacher with a Bachelor's degree is twenty-three
5 thousand two hundred dollars (\$23,200) and that the base salary for a first year teacher with a
6 Master's degree is twenty-six thousand four hundred dollars (\$26,400). The salary schedule shall
7 also provide for steps for years of experience and other intermediate steps for education between
8 the Bachelor's degree and Master's degree.

9 Section 2. The Department of Education and Cultural Affairs shall pay each school district
10 an amount of money equal to the increase in the school district's budget mandated by this Act
11 less the amount of money by which the school district's most recent fiscal year ending general
12 fund balance exceeds twenty percent of the school district's most recent fiscal year general fund
13 expenditures.

14 Section 3. The obligation created by this Act shall be paid out of appropriations by the
15 Legislature for the purpose of increasing teacher's salaries.

1 Section 4. The Department of Education and Cultural Affairs may promulgate rules pursuant
2 to chapter 1-26 to determine the increase in school district budgets mandated by this Act and to
3 provide for payments to school districts as provided in this Act.

1 **BILL HISTORY**

2 1/24/00 First read in House and referred to committee assignment waived. H.J. 204

3 1/25/00 Referred to Appropriations.

4 2/1/00 Scheduled for Committee hearing on this date.

5 2/1/00 Appropriations Deferred to another day.

6 2/7/00 Scheduled for Committee hearing on this date.

7 2/7/00 Appropriations Deferred to another day.

8 2/9/00 Scheduled for Committee hearing on this date.

9 2/9/00 Appropriations Do Pass Amended, Passed, AYES 10, NAYS 0.

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

995D0024

SENATE RETIREMENT LAWS COMMITTEE

ENGROSSED NO. **SB6** - 1/28/00

Introduced by: Senators Rounds, Albers, Brown (Arnold), Lawler, and Olson and
Representatives Diedrich (Larry), Davis, Fiegen, Fischer-Clemens, and Michels
at the request of the Interim Retirement Laws Committee

1 FOR AN ACT ENTITLED, An Act to provide for the increase of Class A employee and
2 employer contributions to the South Dakota Retirement System.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 3-12-71 be amended to read as follows:

5 3-12-71. The member shall make a contribution and the employer shall make an equal
6 contribution, except as otherwise specified, at the following rates:

7 (1) Class A members five percent of compensation through June 30, 2002, and six
8 percent of compensation after June 30, 2002;

9 (2) Justices, judges, and law-trained magistrates nine percent of compensation;

10 (3) All other Class B members eight percent of compensation.

11 The employer shall cause to be deducted on each payroll of a member for each payroll period
12 the contribution payable by the member as provided in this section.

13 ~~Effective July 1, 1984, contributions~~ Contributions required of members by this section shall
14 be made by the participating unit pursuant to the provisions of § 414(h)(2) of the Internal
15 Revenue Code of 1954, as amended and in effect on January 1, 1984. Such contributions shall

- 1 be classified as member contributions for all purposes under this chapter. A member may not
- 2 receive the amount of such contributions directly rather than as contributions under this section.

1 **BILL HISTORY**

2 1/11/00 First read in Senate and referred to Retirement Laws. S.J. 15

3 1/26/00 Scheduled for Committee hearing on this date.

4 1/26/00 Retirement Laws Do Pass Amended, Passed, AYES 5, NAYS 0. S.J. 220

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

285D0080

SENATE TAXATION COMMITTEE ENGROSSED NO. **SB7** - 1/14/00

Introduced by: Senators Symens, Madden, and Vitter and Representatives McNenny, Chicoine, Engbrecht, Juhnke, Lintz, Sebert, Slaughter, Sutton (Duane), Waltman, and Young at the request of the Interim Tax Assessment Committee

1 FOR AN ACT ENTITLED, An Act to remove the legal presumption of correctness which
2 attaches to the assessed valuation determined by the director of equalization.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-3-16 be amended to read as follows:

5 10-3-16. The director of equalization, ~~and his deputies~~, shall assess for taxation all property
6 subject to taxation, except property which the secretary of revenue has been directed to assess,
7 which is situated in the county or municipality for which the director is appointed, including all
8 property located within the corporate limits of ~~municipalities~~ each municipality. No legal
9 presumption of correctness attaches to the director's assessed valuation of property. Each county
10 in this state is an assessment district.

11 Section 2. This Act is effective on November 1, 2000.

1 **BILL HISTORY**

2 1/11/00 First read in Senate and referred to Taxation. S.J. 15

3 1/14/00 Scheduled for Committee hearing on this date.

4 1/14/00 Taxation Do Pass Amended, Passed, AYES 9, NAYS 0. S.J. 43

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

400D0307

HOUSE JUDICIARY COMMITTEE ENGROSSED NO. **SB21** - 2/1/00

Introduced by: The Committee on Judiciary at the request of the Attorney General

1 FOR AN ACT ENTITLED, An Act to allow for additional public distribution of sex offender
2 information.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 22-22-34 be amended to read as follows:

5 22-22-34. The Division of Criminal Investigation may make the file available to any regional
6 or national registry of sex offenders. The division shall accept files from any regional or national
7 registry of sex offenders and shall make such files available ~~when~~ if requested pursuant to
8 §§ 22-22-30 to 22-22-39, inclusive. The division may compile regional or statewide registration
9 lists for public inspection as provided by chapter 1-27 or public distribution, including electronic
10 or internet distribution.

1 **BILL HISTORY**

2 1/11/00 First read in Senate and referred to Judiciary. S.J. 17

3 1/14/00 Scheduled for Committee hearing on this date.

4 1/14/00 Judiciary Do Pass, Passed, AYES 5, NAYS 1. S.J. 42

5 1/15/00 Senate Do Pass, Failed, AYES 14, NAYS 18. S.J. 61

6 1/15/00 Intent to reconsider. S.J. 61

7 1/18/00 Senate Reconsidered, AYES 27, NAYS 7. S.J. 69

8 1/19/00 Senate Deferred to another day. S.J. 120

9 1/20/00 Motion to Amend, Passed. S.J. 129

10 1/20/00 Senate Do Pass Amended, Passed, AYES 29, NAYS 5. S.J. 130

11 1/21/00 First read in House and referred to Judiciary. H.J. 185

12 1/31/00 Scheduled for Committee hearing on this date.

13 1/31/00 Judiciary Do Pass Amended, Passed, AYES 8, NAYS 5. H.J. 298

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

400D0351

SENATE EDUCATION COMMITTEE ENGROSSED NO. **SB28** - 1/28/00

Introduced by: The Committee on Education at the request of the Department of Social Services

1 FOR AN ACT ENTITLED, An Act to provide payment of tuition costs to education programs
2 for students in governmental custody and to eliminate certain payments to educational
3 programs operated by public school districts.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

5 Section 1. That § 13-28-39 be amended to read as follows:

6 13-28-39. The Department of Social Services shall pay tuition costs and related service costs
7 for students in residential treatment centers or group care centers for minors ~~who~~ when the
8 educational program is not operated by a public school district and the students are under the
9 care and custody of the Department of Social Services, the ~~Unified Judicial System~~ Department
10 of Corrections, or other entities approved by the secretary of the Department of Social Services.
11 For students with disabilities residing in a foster home, the Department of Social Services shall
12 pay for special education or special education and related services. Students residing in foster
13 homes must be in the care and custody of the Department of Social Services, the ~~Unified Judicial~~
14 ~~System~~ Department of Corrections, or other entities approved by the secretary of the
15 Department of Social Services. The Department of Social Services ~~will have rate setting~~
16 authority may set rates for tuition costs and related service costs.

1 The secretary of the Department of Social Services may promulgate rules, pursuant to
2 chapter 1-26, pertaining to:

3 (1) The amount, scope, and duration of services;

4 (2) The basis for and extent of provider payments;

5 (3) The method and amount of payment;

6 (4) The methods of recoupment or recovery of overpayments;

7 (5) Administration, record keeping, and audit requirements;

8 (6) Compliance monitoring;

9 (7) Reporting requirement; and

10 (8) Such other standards and requirements as may be necessary to ensure the efficient
11 operation and administration of the program.

1 **BILL HISTORY**

2 1/11/00 First read in Senate and referred to Education. S.J. 19

3 1/13/00 Scheduled for Committee hearing on this date.

4 1/18/00 Scheduled for Committee hearing on this date.

5 1/18/00 Education Do Pass, Passed, AYES 4, NAYS 2. S.J. 68

6 1/18/00 Referred to Education. S.J. 69

7 1/20/00 Scheduled for Committee hearing on this date.

8 1/27/00 Scheduled for Committee hearing on this date.

9 1/27/00 Education Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 219

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

400D0328

SENATE COMMERCE COMMITTEE ENGROSSED NO. **SB33** - 1/14/00

Introduced by: The Committee on Commerce at the request of the Department of Commerce
and Regulation

1 FOR AN ACT ENTITLED, An Act to define the duty of insurers and rights of consumers with
2 regard to auto insurance damage claims.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 For the purposes of this Act, paintless dent repair is any auto body repair that removes minor
7 dents by using specifically designed tools to manipulate and flex the metal from the backside of
8 the dent without the necessity of sanding, priming, or painting.

9 Section 2. That chapter 58-12 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 Any insurer providing commercial or personal motor vehicle insurance in this state
12 responsible for repairing a damaged vehicle for which it is liable shall provide sufficient
13 compensation to the insured to restore the vehicle to substantially the same physical condition
14 as prior to the damage, regardless of whether the insured actually chooses to repair the vehicle.
15 The insurer may adjust claims based in whole or in part upon the paintless dent repair method
16 if:

- 1 (1) The damage is such that the paintless dent repair method is likely to place the
2 damaged area or a portion thereof in substantially the same condition as prior to the
3 damage;
- 4 (2) A paintless dent repair shop holding a South Dakota sales tax license is willing to
5 perform the work as estimated within a reasonable time frame in the local market area
6 of the insured; and
- 7 (3) The written estimate provided to the insured prominently discloses the following:
 - 8 (a) That the repair estimate is based in whole or in part upon the paintless dent
9 repair method. Each item of damage adjusted using that method shall be
10 identified;
 - 11 (b) That paintless dent repair may not be the appropriate repair method for all
12 types of damage;
 - 13 (c) That, if the insurer is liable for the damage listed on the estimate, the insurer
14 shall provide sufficient compensation to restore the vehicle to substantially the
15 same physical condition; and
 - 16 (d) That for any damage which paintless dent repair is appropriate, the insured may
17 choose not to repair the vehicle or to have the vehicle repaired using a different
18 method of repair. If the insured chooses either of these options, the insurer is
19 liable only for the cost of the paintless dent repair method.

20 If, for any portion of the vehicle's damage that the insurer has a duty to repair, the paintless
21 dent repair method is inappropriate, the insurer shall compensate the insured for the amount
22 necessary to complete the repairs in the local market area of the insured. The insurer may not
23 require the insured to travel an unreasonable distance to obtain a repair estimate or to have the
24 vehicle repaired. The insurer may not name a repair shop as payee on a compensation check or
25 draft unless agreed to by the insured.

1 **BILL HISTORY**

2 1/11/00 First read in Senate and referred to Commerce. S.J. 20

3 1/13/00 Scheduled for Committee hearing on this date.

4 1/13/00 Commerce Do Pass Amended, Passed, AYES 5, NAYS 0. S.J. 36

5 1/13/00 Commerce Place on Consent Calendar.

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

813D0287

SENATE EDUCATION COMMITTEE

ENGROSSED NO. **SB59** - 1/26/00

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.

Introduced by: Senators Albers, Madden, and Vitter and Representatives Engbrecht and Hennies

1 FOR AN ACT ENTITLED, An Act to clarify certain provisions related to the filing of student
2 birth certificates.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 13-27-3.1 be amended to read as follows:

5 13-27-3.1. Any person who is required pursuant to § 13-27-1 to cause any child to attend
6 any public or nonpublic school or alternative instruction program pursuant to § 13-27-3 in this
7 state shall, either at the time of enrollment in any school in this state or upon being excused from
8 school attendance pursuant to § 13-27-3 or within thirty days of initial enrollment or excuse,
9 provide the public or nonpublic school or the alternative instruction program with a certified
10 copy of ~~such~~ the child's birth certificate or affidavit in lieu of birth certificate as issued by the
11 Department of Health in such cases where the original birth certificate is deemed unattainable.
12 Any parent or guardian who requests an excuse for his or her child pursuant to § 13-27-3, shall
13 with the initial request for excuse, provide a certified copy of the child's birth certificate or an
14 affidavit notarized or witnessed by two or more witnesses, swearing or affirming that the child
15 identified on the request for excuse is the same person appearing on the child's certified birth

1 certificate. A violation of this section is a Class 2 misdemeanor.

2 Section 2. That § 13-27-3.2 be amended to read as follows:

3 13-27-3.2. Any copy of any certified birth certificate provided pursuant to § 13-27-3.1 shall
4 be maintained by the public or nonpublic school or alternative instruction program and shall
5 ~~become~~ be a part of the child's permanent cumulative school record.

6 Section 3. That § 13-27-3.3 be amended to read as follows:

7 13-27-3.3. The superintendent of any public or nonpublic school or any person who provides
8 alternative instruction in this state who maintains a child's permanent cumulative school record
9 shall ~~regularly~~ report to the ~~state's attorney~~ school board of the district the name and address of
10 any child ~~for whom the school~~ whose permanent cumulative record does not have a copy of a
11 certified birth certificate in violation of § 13-27-3.1 or 13-27-3.2. Upon receipt of the report of
12 violation, the school board shall notify by certified mail the parent or guardian of the child whose
13 record is in violation of §§ 13-27-3.1 and 13-27-3.2. If the violation is not corrected within thirty
14 days after the report, the school board of the district shall notify the state's attorney.

1 **BILL HISTORY**

2 1/15/00 First read in Senate and referred to Education. S.J. 57

3 1/20/00 Scheduled for Committee hearing on this date.

4 1/20/00 Education Deferred to another day, AYES 4, NAYS 2.

5 1/25/00 Education Hog Housed.

6 1/25/00 Scheduled for Committee hearing on this date.

7 1/25/00 Education Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 181

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

910D0019

SENATE EDUCATION COMMITTEE ENGROSSED NO. **SB71** - 1/26/00

Introduced by: Senators Brosz, Everist, Olson, and Reedy and Representatives Konold, Davis, Duniphan, Lockner, and Solum

1 FOR AN ACT ENTITLED, An Act to remove certain restrictions relating to the use of school
2 buses.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 13-29-1 be amended to read as follows:

5 13-29-1. The school board of any school district may acquire, own, operate, or hire buses
6 for the transportation of students to and from its schools either from within or without the
7 district or for transportation to and from athletic, musical, speech, and other interscholastic
8 contests in which participation is authorized by the school board. ~~If the use of a school bus is~~
9 ~~granted by the school board pursuant to subdivision 49-28-2(1) or (8), the school district is not~~
10 ~~liable for suit or damages which may arise as the result of the use. The school board may~~
11 ~~authorize the use of the buses owned by the board for transportation of adults pursuant to~~
12 ~~subdivision 49-28-2(1) or (7). The provisions to transport adults, provided in this section, shall~~
13 ~~not apply to school districts which contain a first class municipality. Use of a school bus for~~
14 ~~transportation of persons enumerated in subdivision 49-28-2(7) is limited to providing shelter,~~
15 ~~health care, nutrition, religious activities and other necessities of life.~~

16 Section 2. That chapter 13-29 be amended by adding thereto a NEW SECTION to read as

1 follows:

2 A school board may allow nonprofit civic organizations or other government entities to use
3 vehicles owned by the school district to transport persons to various activities deemed by the
4 school board to be in the public interest. A school board may adopt policies for the use of its
5 vehicles by other organizations. If the use of a school bus is granted by a school board, the
6 school district is not liable for suit or damages which may result from the operation of the bus
7 by a nonprofit civic organization or other government entity.

1 **BILL HISTORY**

2 1/15/00 First read in Senate and referred to Education. S.J. 59

3 1/20/00 Scheduled for Committee hearing on this date.

4 1/25/00 Scheduled for Committee hearing on this date.

5 1/25/00 Education Do Pass Amended, Passed, AYES 6, NAYS 0. S.J. 182

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

517D0439

SENATE STATE AFFAIRS COMMITTEE

ENGROSSED NO. **SB75** - 1/24/00

This bill has been extensively amended (hoghoused) and may no longer be consistent with the original intention of the sponsors.

Introduced by: Senators Halverson, Dunn (Jim), Hutmacher, Olson, and Rounds and
Representatives Brown (Richard), Apa, Cutler, Fischer-Clemens, and Haley

1 FOR AN ACT ENTITLED, An Act to revise certain provisions relating to the South Dakota

2 Insurance Guaranty Association.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. This Act applies to any kind of direct insurance, but does not apply to:

5 (1) Life, annuity, health, or disability insurance;

6 (2) Mortgage guaranty, financial guaranty, or other forms of insurance offering protection
7 against investment risks;

8 (3) Fidelity or surety bonds, or any other bonding obligations;

9 (4) Credit insurance, vendors' single-interest insurance, or collateral protection insurance,
10 or any similar insurance protecting the interests of a creditor arising out of a creditor-
11 debtor transaction;

12 (5) Insurance of warranties or service contracts including insurance that provides for the
13 repair, replacement, or service of goods or property or indemnification for repair,
14 replacement, or service for the operational or structural failure of the goods or
15 property due to a defect in materials or workmanship or to normal wear and tear, or

1 provides reimbursement for the liability incurred by the issuer of agreements or
2 service contracts that provide such benefits;

3 (6) Title insurance;

4 (7) Ocean marine insurance;

5 (8) Any transaction or combination of transactions between a person, including affiliates
6 of the person, and an insurer, including affiliates of the insurer, that involves the
7 transfer of investment or credit risk unaccompanied by a transfer of insurance risk; or

8 (9) Any insurance provided by or guaranteed or reinsured by any governmental body.

9 Section 2. Terms used in this Act mean:

10 (1) "Account," any one of the three accounts created by this Act;

11 (2) "Affiliate," any person who, directly or indirectly, through one or more intermediaries,
12 controls, is controlled by, or is under common control with an insolvent insurer on
13 December thirty-first of the year immediately preceding the date the insurer becomes
14 an insolvent insurer;

15 (3) "Association," the South Dakota Insurance Guaranty Association created under this
16 Act;

17 (4) "Claimant," any insured making a first party claim or any person instituting a liability
18 claim. No person who is an affiliate of the insolvent insurer may be a claimant;

19 (5) "Director," the director of the Division of Insurance of the Department of Commerce
20 and Regulation;

21 (6) "Control," the possession, direct or indirect, of the power to direct or cause the
22 direction of the management and policies of a person, whether through the ownership
23 of voting securities, by contract other than a commercial contract for goods or
24 nonmanagement services, or otherwise, unless the power is the result of an official
25 position with or corporate office held by the person. Control is presumed to exist if

1 a person, directly or indirectly, owns, controls, holds with the power to vote, or holds
2 proxies representing ten percent or more of the voting securities of any other person.

3 This presumption may be rebutted by a showing that control does not exist in fact;

4 (7) "Covered claim," an unpaid claim, including one for unearned premiums, submitted
5 by a claimant, which arises out of and is within the coverage and is subject to the
6 applicable limits of an insurance policy to which this Act applies issued by an insurer,
7 if the insurer becomes an insolvent insurer after July 1, 1970, and:

8 (a) The claimant or insured is a resident of this state at the time of the insured
9 event. However, for entities other than an individual, the residence of a
10 claimant, insured, or policyholder is the state in which its principal place of
11 business is located at the time of the insured event; or

12 (b) The claim is a first party claim for damage to property with a permanent
13 location in this state.

14 The term, covered claim, does not include:

15 (a) Any amount awarded as punitive or exemplary damages;

16 (b) Any amount sought as a return of premium under any retrospective rating plan;

17 (c) Any amount due any reinsurer, insurer, insurance pool, or underwriting
18 association as subrogation recoveries, reinsurance recoveries, contribution,
19 indemnification, or otherwise. No claim for any amount due any reinsurer,
20 insurer, insurance pool, or underwriting association may be asserted against a
21 person insured under a policy issued by an insolvent insurer other than to the
22 extent the claim exceeds the association obligation limitations set forth in this
23 Act;

24 (d) Any first party claims by an insured whose net worth exceeds fifty million
25 dollars on December thirty-first of the year immediately preceding the year in

1 which the insurer becomes an insolvent insurer. However, an insured's net
2 worth on that date shall be deemed to include the aggregate net worth of the
3 insured and any of its subsidiaries as calculated on a consolidated basis; or

4 (e) Any first party claims by an insured which is an affiliate of the insolvent insurer;

5 (8) "Insolvent insurer," an insurer authorized to transact insurance in this state, either at
6 the time the policy was issued or when the insured event occurred, and against whom
7 a final order of liquidation has been entered after July 1, 1970, with a finding of
8 insolvency by a court of competent jurisdiction in the insurer's state of domicile;

9 (9) "Member insurer," any person who:

10 (a) Writes any kind of insurance to which this Act applies, including the exchange
11 of reciprocal or interinsurance contracts; and

12 (b) Is licensed to transact insurance in this state except companies defined in
13 chapter 58-35.

14 An insurer shall cease to be a member insurer effective on the day following the
15 termination or expiration of its license to transact the kinds of insurance to which this
16 Act applies, however, the insurer shall remain liable as a member insurer for any
17 obligations, including obligations for assessments levied prior to the termination or
18 expiration of the insurer's license and assessments levied after the termination or
19 expiration, with respect to any insurer that became an insolvent insurer prior to the
20 termination or expiration of the insurer's license;

21 (10) "Net direct written premiums," direct gross premiums written in this state on
22 insurance policies to which this Act applies, less return premiums thereon and
23 dividends paid or credited to policyholders on such direct business. The term, net
24 direct written premiums, does not include premiums on contracts between insurers or
25 reinsurers;

1 (11) "Person," any individual, corporation, partnership, association, or voluntary
2 organization;

3 (12) "Unearned premium," the premium for the unexpired period of a policy that has been
4 terminated prior to the expiration of the period for which the premium has been paid.
5 The term does not include any premium that is returnable to the insured for any other
6 reason.

7 Section 3. There is created a nonprofit unincorporated legal entity to be known as the South
8 Dakota Insurance Guaranty Association. Any insurer defined as a member insurer in subdivision
9 (8) of section 2 of this Act is a member of the association as a condition of its authority to
10 transact insurance in this state. The association shall perform its functions under a plan of
11 operation established and approved under sections 30 to 44, inclusive, of this Act and shall
12 exercise its powers through a board of directors established under sections 4 and 5 of this Act.

13 Section 4. The board of directors of the association shall consist of seven persons, each of
14 whom shall be appointed by the director for a term of three years and until a successor has been
15 appointed and qualified. The director shall consult with member insurers concerning their
16 recommendations for the board of directors. Any vacancy on the board shall be filled for the
17 remaining period of the term by a majority vote of the remaining board members subject to the
18 approval of the director.

19 Section 5. In approving selections to the board, the director shall consider, among other
20 things, whether all member insurers are fairly represented. No less than two members of the
21 board shall be domestic insurers.

22 Section 6. Members of the board may be reimbursed from the assets of the association for
23 expenses incurred by them as members of the board of directors.

24 Section 7. The association may:

25 (1) Employ or retain such persons as are necessary to handle claims and perform other

1 duties of the association;

2 (2) Borrow funds necessary to effect the purposes of this Act in accord with the plan of
3 operation;

4 (3) Sue or be sued. The power to sue includes the power and right to intervene as a party
5 before any court in this state that has jurisdiction over an insolvent insurer as defined
6 by this Act;

7 (4) Negotiate and become a party to such contracts as are necessary to carry out the
8 purpose of this Act;

9 (5) Perform such other acts as are necessary or proper to effectuate the purpose of this
10 Act.

11 Section 8. The association is exempt from payment of all fees and all taxes levied by this state
12 or any of its subdivisions except taxes levied on real property.

13 Section 9. To aid in the detection and prevention of insurer insolvencies, it is the duty of the
14 board of directors, upon majority vote, to notify the director of any information indicating any
15 member insurer may be insolvent or in a financial condition hazardous to the policyholders or the
16 public.

17 Section 10. To aid in the detection and prevention of insurer insolvencies, the board of
18 directors may, upon majority vote, request that the director order an examination of any member
19 insurer which the board in good faith believes may be in a financial condition hazardous to the
20 policyholders or the public. Within thirty days of the receipt of such request, the director shall
21 begin the examination. The examination may be conducted as a National Association of
22 Insurance Commissioners' examination or may be conducted by such persons as the director
23 designates. The cost of the examination shall be paid by the association and the examination
24 report shall be treated as are other examination reports. In no event may the examination report
25 be released to the board of directors prior to its release to the public, but this does not preclude

1 the director from complying with section 11 of this Act. The director shall notify the board of
2 directors when the examination is completed. The request for an examination shall be kept on
3 file by the director but it may not be open to public inspection prior to the release of the
4 examination report to the public.

5 Section 11. The director shall report to the board of directors when the director has
6 reasonable cause to believe that any member insurer examined or being examined at the request
7 of the board of directors may be insolvent or in a financial condition hazardous to the
8 policyholders or the public.

9 Section 12. The board of directors may, upon majority vote, make recommendations to the
10 director for the detection and prevention of insurer insolvencies.

11 Section 13. The board of directors may, upon majority vote, make recommendations to the
12 director on matters generally related to improving or enhancing regulation for solvency.

13 Section 14. The board of directors may, at the conclusion of any domestic insurer insolvency
14 in which the association was obligated to pay covered claims, prepare a report on the history and
15 causes of such insolvency, based on the information available to the association, and submit the
16 report to the director.

17 Section 15. The association shall be obligated to pay covered claims existing prior to the
18 order of liquidation arising within thirty days after the order of liquidation, or before the policy
19 expiration date if less than thirty days after the order of liquidation, or before the insured replaces
20 the policy or causes its cancellation, if the insured does so within thirty days of the order of
21 liquidation. The obligation shall be satisfied by paying to the claimant an amount as follows:

22 (1) The full amount of a covered claim for benefits under a workers' compensation
23 insurance coverage;

24 (2) An amount not exceeding twenty-five thousand dollars per policy for a covered claim
25 for the return of unearned premium;

1 (3) An amount not exceeding three hundred thousand dollars per claim for all other
2 covered claims.

3 In no event is the association obligated to a claimant in an amount in excess of the obligation
4 of the insolvent insurer under the policy or coverage from which the claim arises.
5 Notwithstanding any other provisions of this Act, a covered claim does not include a claim filed
6 with the association after the earlier of (i) eighteen months after the date of the order of
7 liquidation, or (ii) the final date set by the court for the filing of claims against the liquidator or
8 receiver of an insolvent insurer and does not include any claim filed with the association or a
9 liquidator for protection afforded under the insured's policy for incurred-but-not-reported losses.
10 The association shall pay only that amount of each unearned premium which is in excess of one
11 hundred dollars.

12 Any obligation of the association to defend an insured shall cease upon the association's (i)
13 payment, by settlement releasing the insured or on a judgment, of an amount equal to the lesser
14 of the association's covered claim obligation limit, or the applicable policy limit, or (ii) tender of
15 such amount.

16 Notwithstanding any other provisions of this Act, except in the case of a claim for benefits
17 under workers' compensation coverage, any obligation of the association to any person shall
18 cease when ten million dollars has been paid in the aggregate by the association and any
19 associations similar to the association of any other state or states or any property/casualty
20 security fund which obtains contributions from insurers on a pre-insolvency basis, to or on behalf
21 of any insured and its affiliates on covered claims or allowed claims arising under the policy or
22 policies of any one insolvent insurer. For purposes of this section, the term, affiliate, means a
23 person who, directly or indirectly, through one or more intermediaries, controls, is controlled by,
24 or is under common control with another person. If the association determines that there may
25 be more than one claimant having a covered claim or allowed claim against the association or any

1 associations similar to the association or any property/casualty insurance security fund in other
2 states, under the policy or policies of any one insolvent insurer, the association may establish a
3 plan to allocate amounts payable by the association in such manner as the association in its
4 discretion deems equitable.

5 Section 16. The association shall be deemed the insurer to the extent of its obligation on the
6 covered claims and to such extent, subject to the limitations provided in this Act, shall have all
7 rights, duties, and obligations of the insolvent insurer as if the insurer had not become insolvent,
8 including the right to pursue and retain salvage and subrogation recoverable on paid covered
9 claim obligations. The association may not be deemed the insolvent insurer for any purpose
10 relating to the issue of whether the association is amenable to the personal jurisdiction of the
11 courts of any state.

12 Section 17. The association shall investigate claims brought against the association and
13 adjust, compromise, settle, and pay covered claims to the extent of the association's obligation
14 and deny any other claims and may review settlements, releases, and judgments to which the
15 insolvent insurer or its insureds were parties to determine the extent to which such settlements,
16 releases, and judgments may be properly contested. The association may appoint and direct legal
17 counsel retained under liability insurance policies for the defense of covered claims.

18 Section 18. The association shall have the right to recover from the following persons the
19 amount of any covered claim paid on behalf of such person pursuant to this chapter:

- 20 (1) Any insured whose net worth on December thirty-first of the year next preceding the
21 date the insurer becomes an insolvent insurer exceeds fifty million dollars and whose
22 liability obligations to other persons, including obligations under workers'
23 compensation insurance coverages, are satisfied in whole or in part by payments made
24 under this chapter; and

- 25 (2) Any person who is an affiliate of the insolvent insurer and whose liability obligations

1 to other persons are satisfied in whole or in part by payments made under this Act.

2 The term, affiliate, does not include any agent or broker of the insolvent insurer.

3 Section 19. The association shall handle claims through its employees or through one or
4 more insurers or other persons designated as servicing facilities. Designation of a servicing
5 facility is subject to the approval of the director, but such designation may be declined by a
6 member insurer.

7 Section 20. The association shall reimburse each servicing facility for obligations of the
8 association paid by the facility and for expenses incurred by the facility while handling claims on
9 behalf of the association and shall pay the other expenses of the association authorized by this
10 Act.

11 Section 21. For purposes of administration and assessment, the association shall be divided
12 into three separate accounts:

- 13 (1) The workers' compensation insurance account;
14 (2) The automobile insurance account; and
15 (3) The account for all other insurance to which this Act applies.

16 Section 22. The association shall allocate claims paid and expenses incurred among the three
17 accounts separately, and assess member insurers separately for each account amounts necessary
18 to pay the obligations of the association under section 15 of this Act subsequent to an insolvency,
19 the expenses of handling covered claims subsequent to an insolvency, the cost of examinations
20 under section 10 of this Act and other expenses authorized by this Act, except that expenses paid
21 from assessments authorized by section 23 of this Act need not be allocated to any particular
22 account.

23 Section 23. In addition to any other assessments authorized by this Act, the association may
24 assess each member insurer an administrative assessment not to exceed one hundred fifty dollars
25 per annum. The administrative assessment shall be made for the purpose of paying operating

1 expenses of the association and its employees not directly attributable to any particular
2 insolvency or insolvent insurer, and the administrative assessment may not be on a pro rata basis.
3 The assessments are due not less than thirty days after prior written notice to the member insurer
4 and shall accrue interest at ten percent per annum on and after the due date.

5 Section 24. The assessments of each member insurer shall be in the proportion that the net
6 direct written premiums of the member insurer for the preceding calendar year on the kinds of
7 insurance in the account bears to the net direct written premiums of all member insurers for the
8 preceding calendar year on the kinds of insurance in the account. The assessment is due not less
9 than thirty days after prior written notice to the member insurer and shall accrue interest at ten
10 percent per annum on and after the due date.

11 Section 25. No member insurer may be assessed in any year on any account an amount
12 greater than two percent of that member insurer's net direct written premiums for the preceding
13 calendar year on the kinds of insurance in the account.

14 Section 26. Each member insurer may set off against any assessment, authorized payments
15 made on covered claims and expenses incurred in the payment of such claims by the member
16 insurer if they are chargeable to the account for which the assessment is made.

17 Section 27. The association may exempt or defer, in whole or in part, the assessment of any
18 member insurer, if the assessment would cause the member insurer's financial statement to reflect
19 amounts of capital or surplus less than the minimum amounts required for a certificate of
20 authority by any jurisdiction in which the member insurer is authorized to transact insurance.
21 However, during the period of deferment, no dividends may be paid to shareholders or
22 policyholders. Deferred assessments shall be paid when such payment will not reduce capital or
23 surplus below required minimums. Such payments shall be refunded to those companies receiving
24 larger assessments by virtue of the deferment, or at the election of any such company, credited
25 against future assessments.

1 Section 28. If the maximum assessment, together with the other assets of the association in
2 any account, does not provide in any one year in any account an amount sufficient to make all
3 necessary payments from that account, the funds available shall be prorated and the unpaid
4 portion shall be paid as soon thereafter as funds become available.

5 Section 29. The association may refund to the member insurers in proportion to the
6 contribution of each member insurer to that account that amount by which the assets of the
7 account exceed the liabilities, if, at the end of any calendar year, the board of directors finds that
8 the assets of the association in any account exceed the liabilities of that account as estimated by
9 the board of directors for the coming year.

10 Section 30. The association shall submit to the director a plan of operation and any
11 amendments necessary or suitable to assure the fair, reasonable, and equitable administration of
12 the association. The plan of operation and any amendments is effective upon approval in writing
13 by the director.

14 Section 31. The plan of operation shall:

- 15 (1) Establish the procedures whereby all the powers and duties of the association under
16 sections 7, 15 to 20, inclusive, and 22 to 29, inclusive, of this Act will be performed;
- 17 (2) Establish procedures for handling assets of the association;
- 18 (3) Establish the amount and method of reimbursing members of the board of directors
19 under section 6 of this Act;
- 20 (4) Establish procedures by which claims may be filed with the association and establish
21 acceptable forms of proof of covered claims. Notice of claims to the receiver or
22 liquidator of the insolvent insurer shall be deemed notice to the association or its
23 agent and a list of such claims shall be periodically submitted to the association or
24 similar organization in another state by the receiver or liquidator;
- 25 (5) Establish regular places and times for meetings of the board of directors;

- 1 (6) Establish procedures for records to be kept of all financial transactions of the
2 association, its agents, and the board of directors;
- 3 (7) Provide that any member insurer aggrieved by any final action or decision of the
4 association may appeal to the director within thirty days after the action or decision;
- 5 (8) Establish the procedures whereby selections for the board of directors will be
6 submitted to the director;
- 7 (9) Establish procedures for the disposition of liquidating dividends or other moneys
8 received from the estate of the insolvent insurer;
- 9 (10) Contain additional provisions necessary or proper for the execution of the powers and
10 duties of the association;

11 Section 32. All member insurers shall comply with the plan of operation. Violation of this
12 section is a Class 2 misdemeanor.

13 Section 33. The plan of operation may provide that any or all powers and duties of the
14 association, except those under subdivision (2) of section 7 of this Act and those under sections
15 22 to 28, inclusive, of this Act are delegated to a corporation, association, or other organization
16 which performs or will perform functions similar to those of this association, or its equivalent,
17 in two or more states. Such a corporation, association, or organization shall be reimbursed as
18 a servicing facility would be reimbursed and shall be paid for its performance of any other
19 functions of the association. A delegation under this section shall take effect only with the
20 approval of both the board of directors and the director, and may be made only to a corporation,
21 association, or organization which extends protection not substantially less favorable and
22 effective than that provided by this Act.

23 Section 34. If at any time the association fails to submit suitable amendments to the plan of
24 operation, the director shall, after notice and hearing, promulgate such reasonable rules as are
25 necessary or advisable to effectuate the provisions of this Act. The rules shall continue in force

1 until modified by the director or superseded by a plan submitted by the association and approved
2 by the director.

3 Section 35. The director shall notify the association of the existence of an insolvent insurer
4 not later than three days after the director receives notice of the determination of the insolvency.
5 The association is entitled to a copy of any complaint seeking an order of liquidation with a
6 finding of insolvency against a member company at the same time that the complaint is filed with
7 a court of competent jurisdiction.

8 Section 36. The director shall, upon request of the board of directors, provide the association
9 with a statement of the net direct written premiums of each member insurer.

10 Section 37. Any proceeding in which the insolvent insurer is a party or is obligated to defend
11 a party in any court in this state shall, subject to waiver by the association in specific cases
12 involving covered claims, be stayed until the last day fixed by the court for the filing of claims
13 and such additional time thereafter as may be determined by the court from the date the
14 insolvency is determined or an ancillary proceeding is instituted in the state, whichever is later,
15 to permit proper defense by the association of all pending causes of action. As to any covered
16 claims arising from a judgment under any decision, verdict, or finding based on the default of the
17 insolvent insurer or its failure to defend an insured, the association, either on its own behalf or
18 on behalf of such insured, may apply to have the judgment, order, decision, verdict, or finding
19 set aside by the same court or administrator that made the judgment, order, decision, verdict, or
20 finding and shall be permitted to defend against the claim on the merits.

21 Section 38. The director may suspend or revoke, after notice and hearing, the certificate of
22 authority to transact insurance in this state of any member insurer that fails to pay an assessment
23 when due or fails to comply with the plan of operation. As an alternative, the director may levy
24 a fine on any member insurer which fails to pay an assessment when due. The fine may not
25 exceed five percent of the unpaid assessment per month, except that no fine may be less than one

1 hundred dollars per month.

2 Section 39. The director may revoke the designation of any servicing facility if the director
3 finds claims are being handled unsatisfactorily.

4 Section 40. Any person having a claim against an insurer, whether or not the insurer is a
5 member insurer, under any provision in an insurance policy other than a policy of an insolvent
6 insurer which is also a covered claim, shall be required to first exhaust any right under the policy.
7 Any amount payable on a covered claim under this Act shall be reduced by the amount of any
8 recovery under the insurance policy.

9 Section 41. Any person having a claim which may be recovered under more than one
10 insurance guaranty association or its equivalent shall seek recovery first from the association of
11 the place of residence of the insured except that if it is a first-party claim for damage to property
12 with a permanent location, the person shall seek recovery first from the association of the
13 location of the property, and if it is a workers' compensation claim, the person shall seek
14 recovery first from the association of the residence of the claimant. Any recovery under this Act
15 shall be reduced by the amount of recovery from any other insurance guaranty association or its
16 equivalent.

17 Section 42. Any person recovering under this Act shall be deemed to have assigned that
18 person's rights under the policy to the association to the extent of any recovery from the
19 association. Every insured or claimant seeking the protection of this Act shall cooperate with the
20 association to the same extent as such person would have been required to cooperate with the
21 insolvent insurer.

22 Section 43. The association has no cause of action against the insured of the insolvent insurer
23 for any sums it has paid out, except such causes of action as the insolvent insurer would have had
24 if the sums had been paid by the insolvent insurer and except as provided in section 18 of this
25 Act.

1 Section 44. In the case of an insolvent insurer operating on a plan with assessment liability,
2 payments of claims of the association may not operate to reduce the liability of insureds to the
3 receiver, liquidator, or statutory successor for unpaid assessments.

4 Section 45. The receiver, liquidator, or statutory successor of an insolvent insurer is bound
5 by determinations of covered claim eligibility under this Act and by settlements of claims made
6 by the association or a similar organization in another state. The court having jurisdiction shall
7 grant such claims priority equal to that which the claimant would have been entitled in the
8 absence of this Act against the assets of the insolvent insurer. The expenses of the association
9 or similar organization in handling claims shall be accorded the same priority as the liquidator's
10 expenses.

11 Section 46. The association shall periodically file with the receiver or liquidator of the
12 insolvent insurer statements of the covered claims paid by the association and estimates of
13 anticipated claims on the association which shall preserve the rights of the association against the
14 assets of the insolvent insurer.

15 Section 47. The association is subject to examination and regulation by the director. The
16 board of directors shall submit, not later than March thirtieth of each year, a financial report for
17 the preceding calendar year in a form approved by the director.

18 Section 48. There is no liability on the part of and no cause of action of any nature may arise
19 against any member insurer, the association or its agents or employees, the board of directors,
20 any person serving as a representative of any director, or the director or the director's
21 representatives for any action taken or any failure to act by them in the performance of their
22 powers and duties under this Act.

23 Section 49. Any final action or order of the director under this Act is subject to judicial
24 review in a court of competent jurisdiction.

25 Section 50. The rates and premiums charged for insurance policies to which this Act applies

1 shall include amounts sufficient to recoup a sum equal to the amounts paid to the association by
2 the member insurer less any amounts returned to the member insurer by the association and such
3 rates may not be deemed excessive because they contain an amount reasonably calculated to
4 recoup assessments paid by the member insurer.

5 Section 51. It is unfair trade practice for any insurer or agent to in any manner make use of
6 the protection given policyholders by this Act as a reason for buying insurance from the insurer
7 or agent.

8 Section 52. The association shall pay claims in any order which it deems reasonable,
9 including the payment of claims as such are received from the claimants or in groups or
10 categories of claims.

11 Section 53. The association and any similar organization in another state shall be recognized
12 as claimants in the liquidation of an insolvent insurer for any amounts paid by them on covered
13 claims obligations as determined under this Act or similar laws in other states and shall receive
14 dividends and any other distributions at the priority set forth in § 58-29B-124.

15 Section 54. The liquidator, receiver, or statutory successor of an insolvent insurer covered
16 by this chapter shall permit access by the board or its authorized representative to any of the
17 insolvent insurer's records that are necessary for the board in carrying out its functions under this
18 Act with regard to covered claims. In addition, the liquidator, receiver, or statutory successor
19 shall provide the board or its representative with copies of such records upon request by the
20 board and at the expense of the board.

21 Section 55. Except for actions by member insurers aggrieved by final actions or decisions of
22 the association pursuant to subdivision (7) of section 31 of this Act, any action relating to or
23 arising out of this Act against the association shall be brought in a court in this state. The courts
24 in this state have exclusive jurisdiction over all actions relating to or arising out of this Act
25 against the association.

1 Section 56. This Act shall be known as the South Dakota Insurance Guaranty Association
2 Act.

3 Section 57. That §§ 58-29A-1 to 58-29A-53, inclusive, be repealed.

1 **BILL HISTORY**

2 1/15/00 First read in Senate and referred to State Affairs. S.J. 60

3 1/21/00 Scheduled for Committee hearing on this date.

4 1/24/00 Scheduled for Committee hearing on this date.

5 1/24/00 State Affairs Do Pass Amended, Passed, AYES 8, NAYS 0. S.J. 150

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

239D0472

SENATE COMMERCE COMMITTEE ENGROSSED NO. **SB84** - 1/28/00

Introduced by: Senators Rounds, Kloucek, and Symens and Representatives Jaspers and Wilson

1 FOR AN ACT ENTITLED, An Act to regulate the ownership of motor vehicle dealerships.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That chapter 32-6B be amended by adding thereto a NEW SECTION to read as
4 follows:

5 In this Act, the term, manufacturer, includes a representative or a person or entity who is
6 affiliated with a manufacturer or representative, or who, directly or indirectly through an
7 intermediary, is controlled by, or is under common control with, the manufacturer. For purposes
8 of this section, a person or entity is controlled by a manufacturer if the manufacturer has the
9 authority directly or indirectly, by law or by agreement of the parties, to direct or influence the
10 management and policies of the person or entity.

11 Section 2. That chapter 32-6B be amended by adding thereto a NEW SECTION to read as
12 follows:

13 Except as otherwise provided by this Act, no manufacturer or franchisor may directly or
14 indirectly:

15 (1) Own an interest in a vehicle dealer or dealership;

16 (2) Operate or control a vehicle dealer or dealership; or

1 (3) Act in the capacity of a vehicle dealer.

2 Section 3. A manufacturer or franchisor may own an interest in a franchised vehicle dealer,
3 or otherwise control a dealership, for a period not to exceed twelve months from the date the
4 manufacturer or franchisor acquires the dealership if:

5 (1) The person from whom the manufacturer or franchisor acquired the dealership was
6 a franchised dealer; and

7 (2) The dealership is for sale by the manufacturer or franchisor at a reasonable price and
8 on reasonable terms and conditions.

9 Section 4. That chapter 32-6B be amended by adding thereto a NEW SECTION to read as
10 follows:

11 For the purpose of broadening the diversity of its dealer body and enhancing opportunities
12 for qualified persons who are part of a group who have historically been underrepresented in its
13 dealer body, or other qualified persons who lack the resources to purchase a dealership outright,
14 but for no other purpose, a manufacturer or franchisor may temporarily own an interest in a
15 dealership if the manufacturer's or franchisor's participation in the dealership is in a bona fide
16 relationship with a franchised vehicle dealer who:

17 (1) Has made a significant investment in the dealership, subject to loss;

18 (2) Has an ownership interest in the dealership; and

19 (3) Operates the dealership under a plan to acquire full ownership of the dealership within
20 a reasonable time and under reasonable terms and conditions.

21 Section 5. That chapter 32-6B be amended by adding thereto a NEW SECTION to read as
22 follows:

23 On a showing by a manufacturer or franchisor of good cause, the department may extend the
24 time limit set forth in section 3 of this Act. No extension under this section may exceed twelve
25 months. An application for an extension after the first extension is granted is subject to protest

- 1 by a vehicle dealer of the same line-make whose dealership is located in the same county as, or
- 2 within fifteen miles of, the dealership owned or controlled by the manufacturer or franchisor. The
- 3 department may not grant more than two extensions.

1 **BILL HISTORY**

2 1/18/00 First read in Senate and referred to Commerce. S.J. 71

3 1/27/00 Scheduled for Committee hearing on this date.

4 1/27/00 Commerce Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 217

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

555D0494

SENATE LOCAL GOVERNMENT COMMITTEE

ENGROSSED NO. **SB103** - 1/24/00

Introduced by: Senators Bogue and Dunn (Rebecca) and Representatives Heineman and
Chicoine

1 FOR AN ACT ENTITLED, An Act to revise the process and requirements for changing the
2 form of municipal government.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 9-2-3 be amended to read as follows:

5 9-2-3. ~~Third class municipalities~~ Each municipality shall be governed by a board of trustees:
6 ~~— First and second class municipalities shall be governed either by,~~ a mayor and common
7 council, or by a board of commissioners, ~~in each case with or without a.~~ A city manager may
8 serve with any of the forms of government.

9 Section 2. That § 9-11-1 be repealed.

10 ~~— 9-11-1. When by reason of an increase of population a third class municipality shall pass to~~
11 ~~a municipality of the second class, at the next annual municipal election it shall elect a mayor and~~
12 ~~common council, and continue under that form of government until it is changed as provided by~~
13 ~~this title.~~

14 Section 3. That § 9-11-5 be amended to read as follows:

15 9-11-5. The voters of any ~~first or second class~~ municipality may change its form of
16 government ~~from the aldermanic to the commission or from the commission to the aldermanic,~~

1 ~~or may change the number of its commission, or change its form of government from the city~~
2 ~~manager plan to the aldermanic or commission plan, or from any form of the aldermanic or~~
3 ~~aldermanic-manager plan to any form of the commission or commission-manager plan and vice~~
4 ~~versa~~ or change the number of its commissioners, wards, or trustees by a majority vote of all
5 electors voting at an election called and held as ~~hereinafter~~ provided. ~~Municipalities~~ Any
6 municipality under special charter may ~~in like manner~~ adopt any ~~of the forms~~ form of government
7 as ~~hereinabove~~ provided in this title.

8 Section 4. That § 9-11-6 be amended to read as follows:

9 9-11-6. If a petition signed by fifteen percent of the registered voters of any ~~first or second~~
10 ~~class~~ municipality, as determined by the total number of registered voters at the last preceding
11 general election, is presented to the governing body requesting that an election be called for the
12 purpose of voting upon a question of change of form of government or upon a question of the
13 number of wards, commissioners or trustees, the governing body shall call an election to be held
14 within fifty days from the date of the filing of the petition with the ~~auditor~~ municipal finance
15 officer. At that election the question of the change of form of government or the number of
16 wards, commissioners or trustees, or both, shall be submitted to the voters ~~thereof~~. No signature
17 on the petition is valid if signed more than six months prior to the filing of the petitions. If the
18 petition is filed on or after January first prior to the annual municipal election and within
19 sufficient time to comply with the provisions of § 9-13-14, the question ~~shall~~ may be submitted
20 at that annual municipal election.

21 The election shall be held upon the same notice and conducted in the same manner as other
22 city elections.

23 Section 5. That § 9-11-9 be amended to read as follows:

24 9-11-9. If ~~at such an election a change of~~ changes the form of government or number of
25 commissioners, wards, or trustees is ~~decided upon~~ approved, at the next annual municipal

election or at a special election called by the governing board and held pursuant to § 9-13-14,
officers shall be chosen under the changed form of government.

Section 6. That § 9-11-10 be amended to read as follows:

9-11-10. Any ordinance, resolution, contract, obligation, right, or liability of the ~~first or~~
~~second class~~ municipality shall continue in force and effect the same as though no change of
government ~~had~~ has occurred.

Section 7. That § 9-11-2 be repealed.

~~9-11-2. Whenever the population of a municipality of the second class shall fall below five
hundred inhabitants, as shown by the last preceding federal census, such municipality may be
classed as a municipality of the third class and denominated a town.~~

Section 8. That § 9-11-3 be repealed.

~~9-11-3. In order so to change its status such first or second class municipality as described
in § 9-11-2 may through its governing body apply to the circuit court having jurisdiction, for a
judgment authorizing such change. Upon the presentation of such application the court shall by
order fix a time and place for hearing such application. Notice thereof shall be given by
publishing such order once a week for two successive weeks, the last publication to be not less
than ten days prior to the day fixed for hearing and by posting a copy of the order in three public
places in such municipality not less than ten days prior to the hearing.~~

Section 9. That chapter 9-11 be amended by adding thereto a NEW SECTION to read as
follows:

If the population of a municipality, as shown by the last preceding federal census, increases
or decreases causing the municipality to pass into a different class of municipality pursuant to
§ 9-2-1, the municipality may, through its governing body, apply to the circuit court having
jurisdiction for a judgment authorizing the classification change. Upon the presentation of the
application, the court shall establish a time and place for hearing the application. Notice of the

1 hearing shall be given by publishing the order once a week for two successive weeks, the last
2 publication to be not less than ten days prior to the day of the hearing, Not less than ten days
3 prior to the date of the hearing, the notice of hearing shall also be posted in three public places
4 in the municipality.

5 Section 10. That § 9-11-4 be amended to read as follows:

6 9-11-4. Upon such hearing, if the facts warrant the granting of the application, the court shall
7 make and enter its judgment changing the status of ~~such first or second class~~ the municipality to
8 that of a municipality of the ~~third~~ appropriate class, pursuant to § 9-2-1. The court shall establish
9 ~~fixing~~ the time when ~~such~~ the change shall be effective and ~~determining~~ determine the manner
10 in which the change shall be made.

11 A certified copy of ~~such~~ the judgment shall be filed in the office of the register of deeds of
12 the county wherein such municipality is situated, and also in the Office of the Secretary of State.

1 **BILL HISTORY**

2 1/19/00 First read in Senate and referred to Local Government. S.J. 111

3 1/24/00 Scheduled for Committee hearing on this date.

4 1/24/00 Local Government Do Pass Amended, Passed, AYES 6, NAYS 1. S.J. 163

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

670D0431

SENATE JUDICIARY COMMITTEE

ENGROSSED NO. **SB117** - 2/1/00

Introduced by: Senators Staggers, Dennert, Flowers, Lange, Moore, Olson, and Symens and
Representatives Monroe, Diedtrich (Elmer), Fischer-Clemens, Garnos, Klaudt,
Slaughter, and Sutton (Duane)

- 1 FOR AN ACT ENTITLED, An Act to prohibit strip-searches for violations of curfew.
- 2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:
- 3 Section 1. No person under the age of eighteen detained solely for a curfew violation may
- 4 be strip-searched.

1 **BILL HISTORY**

2 1/19/00 First read in Senate and referred to Judiciary. S.J. 114

3 1/21/00 Scheduled for Committee hearing on this date.

4 1/21/00 Judiciary Deferred to another day.

5 1/28/00 Scheduled for Committee hearing on this date.

6 1/31/00 Scheduled for Committee hearing on this date.

7 1/31/00 Judiciary Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 262

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

583D0281

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB153** - 1/24/00

Introduced by: Senators Moore, Flowers, Hutmacher, Olson, and Staggers and Representatives Napoli, Haley, Koehn, and Koetzle

1 FOR AN ACT ENTITLED, An Act to restrict the effect of certain provisions relating to the
2 illegal sale of alcoholic beverages to underage persons.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. No person may be convicted of illegally selling any alcoholic beverage to any
5 underage person pursuant to § 35-9-1 or 35-9-1.1, if the underage person was in possession of,
6 and the seller relied upon, any false age-bearing identification document that was furnished to
7 the underage person by any state or local law enforcement agency or any agent, employee,
8 contractor, or associate of any state or local law enforcement agency for the purpose of
9 attempting to illegally purchase any alcoholic beverage.

1 **BILL HISTORY**

2 1/20/00 First read in Senate and referred to Judiciary. S.J. 128

3 1/24/00 Scheduled for Committee hearing on this date.

4 1/24/00 Judiciary Do Pass Amended, Passed, AYES 6, NAYS 1. S.J. 175

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

400D0664

SENATE COMMERCE COMMITTEE ENGROSSED NO. **SB157** - 2/2/00

Introduced by: Senators Daugaard and Brosz and Representatives Koskan and Broderick

1 FOR AN ACT ENTITLED, An Act to clarify the reporting and collection of the
2 telecommunications access fee for the deaf, hearing impaired, and speech impaired.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-59-1 be amended to read as follows:

5 10-59-1. The provisions of this chapter apply to any taxes or fees or persons subject to taxes
6 or fees imposed by chapters 10-39, 10-39A, 10-39B, 10-43, 10-45, 10-46, 10-46A, 10-46B,
7 10-47B, 10-52, 10-60, 32-3, 32-5, 32-5B, 32-6B, 32-9, 32-10, and 34A-13 and §§ 22-25-48,
8 49-31-51, 50-4-13 to 50-4-17, inclusive, and the provisions of chapter 10-45B.

9 Section 2. That chapter 49-31 be amended by adding thereto a NEW SECTION to read as
10 follows:

11 The secretary of revenue may promulgate rules, pursuant to chapter 1-26, to administer the
12 fee imposed pursuant to § 49-39-51. The rules may include:

- 13 (1) The filing of returns and payment of the fee;
- 14 (2) Determining the application of the fee;
- 15 (3) Record-keeping requirements; and
- 16 (4) Determining auditing methods.

1 **BILL HISTORY**

2 1/21/00 First read in Senate and referred to Commerce. S.J. 138

3 2/1/00 Scheduled for Committee hearing on this date.

4 2/1/00 Commerce Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 268

5 2/1/00 Commerce Place on Consent Calendar.

State of South Dakota

SEVENTY-FIFTH SESSION
LEGISLATIVE ASSEMBLY, 2000

357D0632

SENATE TAXATION COMMITTEE ENGROSSED NO. **SB167** - 2/3/00

Introduced by: Senators Benson and Bogue and Representatives Juhnke and Koskan

1 FOR AN ACT ENTITLED, An Act to clarify who is responsible to file the return and remit the
2 sales tax due from auctions.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 10-45 be amended by adding thereto a NEW SECTION to read as
5 follows:

6 All auctions sales and consignment sales of tangible personal property and services are sales
7 at retail. The auction clerk shall file the return and remit the tax imposed by this chapter on the
8 gross receipts from each auction after applying the deductions provided by § 10-45-92.
9 However, the auctioneer is responsible for the payment of the tax imposed by this chapter if the
10 auction clerk is an employee of the auctioneer or if the auction clerk does not have a permit as
11 required by this chapter. In addition to any other information required to be kept by this chapter,
12 each auction clerk shall keep records that identify the owner of the property sold at auction and
13 the auctioneer who conducts the sale of such property.

14 Section 2. That chapter 10-46 be amended by adding thereto a NEW SECTION to read as
15 follows:

16 All auctions sales and consignment sales of tangible personal property and services are sales

1 at retail. The auction clerk shall file the return and remit the tax imposed by this chapter on the
2 gross receipts from each auction after applying the deductions provided by § 10-45-92.
3 However, the auctioneer is responsible for the payment of the tax imposed by this chapter if the
4 auction clerk is an employee of the auctioneer or if the auction clerk does not have a permit as
5 required by this chapter. In addition to any other information required to be kept by this chapter,
6 each auction clerk shall keep records that identify the owner of the property sold at auction and
7 the auctioneer who conducts the sale of such property.

1 **BILL HISTORY**

2 1/21/00 First read in Senate and referred to Taxation. S.J. 140

3 2/2/00 Scheduled for Committee hearing on this date.

4 2/2/00 Taxation Do Pass Amended, Passed, AYES 8, NAYS 0. S.J. 284

State of South Dakota

SEVENTY-FIFTH SESSION LEGISLATIVE ASSEMBLY, 2000

552D0714

SENATE ENGROSSED NO. **SB178** - 2/4/00

Introduced by: Senators Hainje, Frederick, Paisley, and Vitter and Representatives Brown (Richard), Munson (Donald), Peterson, and Richter

1 FOR AN ACT ENTITLED, An Act to revise the school term.

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 Section 1. That § 13-26-1 be amended to read as follows:

4 13-26-1. The school fiscal year shall begin July first and end June thirtieth. ~~A school day shall~~
5 ~~be at least five and one-half hours, exclusive of intermissions, and at least two and three-fourths~~
6 ~~hours shall count as a half day. The time specified as a "school day" shall not apply below grade~~
7 ~~four.~~ Each local school board shall set the number of days in a school term, the length of a school
8 day, and the number of school days in a school week. The local school board or governing body
9 shall establish the number of hours in the school term for kindergarten programs. The Board of
10 Education shall promulgate rules pursuant to chapter 1-26 setting the minimum number of hours
11 in the school term for grades one through three. The number of hours in the school term for
12 grades four through twelve may not be less than nine hundred sixty-two and one-half hours,
13 exclusive of intermissions. An "intermission" is the time when pupils are at recess or lunch.

14 Section 2. That § 13-26-2 be amended to read as follows:

15 13-26-2. The school board or governing body shall operate grades one through twelve in its
16 schools for at least a nine-month regular term in any one school year. The regular school term

1 may be conducted on a year-round basis, ~~but for grades one through twelve shall consist of~~
2 ~~school actually in session for at least one hundred seventy-five days~~ and shall begin on a date
3 established by the school board. The ~~State~~ Board of Education shall promulgate rules pursuant
4 to chapter 1-26 governing the operation and scheduling of year-round schools. ~~The rules may~~
5 ~~allow deviations from the one hundred seventy-five day requirement in this section and from the~~
6 ~~five and one-half hour per day requirement in § 13-26-1 if the total school term hours~~
7 ~~requirement in § 13-26-2.1 is met. The local school board or governing body may establish the~~
8 ~~school term for kindergarten programs. Any school board or governing body may release~~
9 graduating high school seniors from school before the end of the regular term if the release is for
10 no more than three school days. Make up days time for school closing because of weather,
11 disease, or emergency need not exceed ten school days. Graduating seniors are excused from
12 make up days time if the make up days occur time occurs after the students have graduated or
13 after graduation exercises have been held. If classes have been convened and then are dismissed
14 because of inclement weather, that day constitutes a school day in session equal to the number
15 of hours planned for that day as established in the local school district calendar for the year.

16 School boards are encouraged to provide days time within the regular school term for
17 curriculum and staff development which shall be in addition to the ~~one hundred seventy-five days~~
18 time required in this section. Each school board shall determine the appropriate ~~number~~ amount
19 of days time for this activity and how best to use the time based on local needs for program
20 development, increased parent participation, student contact, teachers' preparation, or other
21 needs of the schools in the district. School shall be in session only when classes are held and as
22 provided in §§ 13-26-4 and 13-26-4.1. A school board may operate a special term during the
23 summer months.

24 Section 3. That § 13-26-2.1 be repealed.

25 ~~13-26-2.1. Notwithstanding §§ 13-26-1 and 13-26-2, each local school board may establish~~

1 ~~the length of a school day and the number of school days in a school week, provided the number~~
2 ~~of school hours in a school term for grades four through twelve may not be less than nine~~
3 ~~hundred sixty-two and one-half hours, exclusive of intermission. A plan to establish a school~~
4 ~~term pursuant to this section must first be approved by the South Dakota Board of Education.~~
5 ~~The state board may adopt rules, pursuant to chapter 1-26, regulating the approval of local~~
6 ~~district plans.~~

1 **BILL HISTORY**

2 1/24/00 First read in Senate and referred to Education. S.J. 166

3 1/27/00 Scheduled for Committee hearing on this date.

4 1/27/00 Education Deferred to another day.

5 2/1/00 Education Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 266

6 2/3/00 Motion to Amend, Passed. S.J. 308

7 2/3/00 Senate Do Pass Amended, Passed, AYES 31, NAYS 1. S.J. 308